

The Honorable John H. Chun

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON.COM, INC., a Delaware
corporation; and AMAZON.COM SERVICES
LLC, a Delaware limited liability company,

Plaintiffs,

v.

YAN LI, an individual; and XIWEI CHEN, an
individual; and DOES 1-10,

Defendants.

No. 2:23-cv-00486-JHC

**DECLARATION OF SCOTT
COMMERSON IN SUPPORT OF
PLAINTIFFS' *EX PARTE* MOTION
FOR DEFAULT JUDGMENT AND
PERMANENT INJUNCTION AGAINST
DEFENDANTS**

I, Scott Commerson, declare and state as follows:

1. I am a Partner at the law firm Davis Wright Tremaine LLP, which represents Plaintiffs Amazon.com, Inc. and Amazon.com Services LLC (collectively, "Amazon") in the above-entitled litigation. I am over 18 years of age. The statements made below are true to the best of my knowledge and belief. I make them in support of Plaintiffs' Ex Parte Motion for Default Judgment and Permanent Injunction against Defendants Yan Li ("Li") and Xiwei Chen ("Chen").

2. On March 30, 2023, Amazon filed the Complaint, which alleged claims against the Doe Defendants who were responsible for using a trademark registration from the European Union Intellectual Property Office ("EUIPO") for the mark "Vivcic"¹ to create an Amazon

¹ EUIPO trademark filing number 018292374 (the "Vivcic Trademark").

Brand Registry² account, which they then abused to submit fraudulent takedown notices to target and remove content from product listings in the Amazon.com store (“Amazon Store”). Dkt. 1.

Amazon Identifies Defendants Through Discovery, Files Amended Complaint, and Serves Defendants.

3. In an effort to identify and locate the individuals or entities responsible for the Vivcic Brand Registry Account, Amazon served third-party subpoenas on service providers that (1) were linked to the Vivcic Brand Registry Account, and/or (2) were linked to the Cunc Ylo selling account (the “Cunc Ylo Selling Account”), which Defendants used to create the Vivcic Brand Registry Account.³ The subpoena targets included PingPong Global Solutions, Inc. (“PingPong”), a payment service processor that was linked to the Cunc Ylo Selling Account.

4. Discovery from PingPong uncovered Defendant Li’s and Defendant Chen’s responsibility for the Vivcic Brand Registry Account. PingPong hosted two virtual bank accounts that were used by the operators of the Cunc Ylo Selling Account to receive and transfer proceeds from their sale of products in the Amazon Store. PingPong’s production disclosed that both Defendant Li and Defendant Chen had registered a PingPong account linked to the Cunc Ylo Selling Account. Based on Defendants control over the financial accounts that were registered to receive, and did receive, disbursements from the Cunc Ylo Selling Account, it is reasonable to infer that Defendants Li and Chen controlled both the Cunc Ylo Selling Account, and the Vivcic Brand Registry Account that was linked to the Cunc Ylo Selling Account.

5. Based on the information Amazon uncovered in its investigation, Amazon filed a First Amended Complaint on May 15, 2014, that named Defendants Li and Chen. Dkt. 30.

6. On May 28, 2024, Amazon moved for permission to serve Defendants via email, and the Court granted that Motion on June 13, 2024. Dkt. 40. Amazon successfully served the Summons and First Amended Complaint on Defendants via email on June 20, 2024. Dkts. 41-42.

² The Amazon Brand Registry account bearing the account number 1410247, for which the Vivcic Trademark was added on or about August 13, 2021 (the “Vivcic Brand Registry Account”).

³ As explained in the concurrently-filed Declaration of Ong Qui Yin (“Ong Declaration”), a selling account owner can link their Brand Registry account to their selling account. Amazon’s records disclosed that the owners of the Vivcic Brand Registry account linked that account to the Cunc Ylo Selling Account at the time of opening.

7. After Defendants failed to respond or otherwise appear in the action, Amazon moved for entry of default (Dkt. 43), which the Court entered on July 26, 2024. Dkt. 44.

8. Since the Court entered default on July 30, 2024, Defendants have not appeared or filed anything in this case and have not contacted Amazon.

Amazon's Reasonable Attorneys' Fees and Costs.

9. As part of its duties and standard practices, DWT keeps regular records regarding the hours worked by attorneys on legal matters. Attached as **Exhibit A** is a true and correct copy of DWT's time records for services rendered for this lawsuit from January 16, 2024 through August 16, 2024 by myself, DWT associates Adam Sgro and Joseph Elie-Meyers, and DWT attorneys Drew Anderson and Christopher Smith. These attorneys and I have been the primary attorneys working on this case.⁴ I have redacted portions of certain entries to protect the attorney-client privilege.

10. As identified in Exhibit A, DWT's work on this lawsuit included following up on third-party subpoenas filed by Amazon's prior litigation counsel, drafting an Amended Complaint, and conducting motions practice, including drafting a motion for alternative service, a motion for entry of default, and the instant motion for default judgment.

11. The attorneys' fees we are seeking to recover total \$44,226. This number represents the time that Adam Sgro, Joseph Elie-Meyers, Drew Anderson, Christopher Smith, and I expended on this lawsuit, multiplied by our reasonable hourly rates. Notably, Amazon's fees request represents only a fraction of the total attorneys' fees that were actually expended on this case, as we are not seeking to recover the fees of the prior law firm that worked on this case.

12. I am a partner in DWT's Los Angeles office. I have been practicing law since my graduation from University of Virginia School of Law in 2003. More information concerning my experience and qualifications is available at <https://www.dwt.com/people/c/commerson-scott-r>.

⁴ A prior law firm, Fenwick & West LLP ("Fenwick"), drafted the initial Complaint in this action and conducted discovery before DWT substituted into the case in January 2024. Amazon is not seeking to recover Fenwick's fees.

1 My 2024 standard billing rate is \$990. I am admitted to practice before the Washington Bar and
2 the California Bar.

3 13. Adam Sgro is an associate in DWT's New York office. He has been practicing
4 law since his graduation from Fordham University School of Law in 2014. More information
5 concerning his experience and qualifications is available at [https://www.dwt.com/people/s/sgro-](https://www.dwt.com/people/s/sgro-adam)
6 [adam](https://www.dwt.com/people/s/sgro-adam). His 2024 standard billing rate is \$815 per hour.

7 14. Joseph Elie-Meyers is an attorney in DWT's Los Angeles office. He has been
8 practicing law since his graduation from the University of Yale Law School in 2018. His 2024
9 standard billing rate is \$725 per hour. More information concerning his experience and
10 qualifications is available at <https://www.dwt.com/people/e/elie-meyers-joseph>.

11 15. Drew Anderson is an attorney in DWT's Los Angeles office. He has been
12 practicing law since his graduation from USC Law School in 2012. His 2024 standard billing
13 rate is \$300 per hour.


14 16. Christopher Smith is an attorney in DWT's Los Angeles office. He has been
15 practicing law since his graduation from the University of Iowa College of Law in 2004. His
16 2024 standard billing rate is \$295 per hour.

17 17. Courts in the Western District of Washington have found DWT's standard billing
18 rates to be reasonable, including specifically my standard billing rate. *See, e.g., Amazon.com,*
19 *Inc. v. Wong*, 2022 WL 1092518, at *2 (W.D. Wash. 2022) (finding DWT's standard rates
20 reasonable, including \$785 per hour for myself, and \$535 per hour for DWT associates, because
21 such rates are "comparable to those prevailing in the community for similar work performed by
22 attorneys of comparable skill, experience, and reputation") (internal quotation marks omitted).

23 18. Since the Court entered default on July 30, 2024, Defendants Li and Chen have
24 not appeared or filed any papers in this case and have not contacted Amazon.

25
26 I declare under penalty of perjury that the foregoing is true and correct to the best of my
27 knowledge.

1 EXECUTED this 19th day of September, 2024 at Los Angeles, California.

2 
3 _____
4 Scott Commerson